

CITY OF KELOWNA

BYLAW NO. 10750

Amendment No. 1 to Housing Agreement Authorization Bylaw Mode Properties Ltd. Inc. No. BC0788187 - Bylaw No. 10183

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that Housing Agreement Authorization Bylaw - Mode Properties Ltd. Inc. No. BC0788187 being Bylaw No. 10183 be amended as follows:

1. THAT the properties located at Strata Lot 40, District Lot 141, ODYD, Plan KAS3658 and Strata Lot 41, District Lot 141, ODYD, Plan KAS3658 be removed from the Section 1 in their entirety;
2. AND THAT the Municipal Council hereby authorizes the City of Kelowna to enter into a Housing Agreement with Mode Properties Ltd. Inc. No. BC0788187 for the lands known as:

Strata Lot 40, District Lot 141, ODYD, Plan KAS3658; and
Strata Lot 41, District Lot 141, ODYD, Plan KAS3658

located on Dickson Avenue, Kelowna, B.C., a true copy of which is attached to and forms part of this bylaw as Schedule "B" and Schedule "C" respectfully.

2. The Mayor and City Clerk are hereby authorized to execute the attached agreement as well as any conveyances, deeds, receipts or other documents in connection with the attached agreement.
3. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first, second and third time by the Municipal Council this

Amended at third reading by the Municipal Council of the City of Kelowna this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Schedule "B"

Page 1

AFFORDABLE RENTAL AND/OR OWNER HOUSING AGREEMENT

THIS AGREEMENT dated for reference August 9, 2012 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

PID: 027-889-327
Strata Lot 40, District Lot 141 ODYD KAS3658;

And is

BETWEEN:

Patricia Swain
218 – 1550 Dickson Avenue
Kelowna, BC, V1Y 9Y8

("Owner")

AND:

CITY OF KELOWNA, a local government incorporated pursuant to the *Community Charter* and having its offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

("City")

GIVEN THAT:

- A. The City may, pursuant to section 905(1) of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, and availability of the housing units on the land or construction on land;
- B. The Owner and the City wish to enter into this Agreement to provide for affordable ownership and/or affordable rental housing on the terms and conditions set out in this Agreement, and agree that this Agreement is a housing agreement under s. 905 of the *Local Government Act*; and
- C. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement.

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the City and Owner agree, as a housing agreement between the Owner and the City under s. 905(1) of the *Local Government Act*, as follows:

ARTICLE 1

INTERPRETATION

1.1 Definitions -

"Affordable Ownership" means the income level, published annually by the City, at which a Household would be capable of buying a home at the Starter Home Price, and is based on the purchase ability at the median income level from the most recent federal census for all two or more person households, assuming 30% of gross household income expenditure for shelter;

"Affordable Ownership Dwelling Unit" means a Dwelling Unit to be sold for the Starter Home Price to a Household that meets the Affordable Ownership criteria;

"Affordable Rental" is the affordable rental rate published periodically by the City, being a calculation of average rents for Kelowna, using data from the annual Canada Mortgage and Housing Corporation ("CMHC") Rental Market Report as set out in Schedule E;

"Affordable Rental Unit" means a Dwelling Unit that is available for rent at an Affordable Rental rate;

"BCCPI" means the All-Items Average Annual Consumer Price Index for British Columbia, published yearly by Statistics Canada, or its successor in function, where 2002 = 100;

"Caregiver" means an individual who provides assistance with the performance of the personal functions and activities necessary for daily living that a person is unable to perform efficiently for himself or herself;

"City" means the City of Kelowna;

"Dwelling Unit" means accommodation providing sleeping rooms, washrooms, and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi permanently for a Household. This use does not include a room in a hotel or a motel;

"Gross Annual Income" means the sum of all taxable incomes, being the amount identified as taxable income on the most recent income tax return (line 260 of the income tax T1 General Form), of all individuals 15 years and older that reside in the Household;

"Household" means

- (a) a person;
- (b) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;
- (c) a group of not more than five persons, including boarders, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or
- (d) a combination of (b) and (c), provided that the combined total does not include more than 3 persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities.

In addition, a household may also include up to one Caregiver or nanny;

“Land” means the land described herein;

“LTO” means the Kamloops Land Title Office or its successor;

“Maximum Allowable Income” means, in respect of an Affordable Rental Dwelling Unit, the threshold income level calculated according to the formula set out in Schedule E;

“Official Community Plan” means the City of Kelowna Official Community Plan Bylaw No. 7600, or its successor bylaw;

“Owner” means the registered owner of the Land from time to time and any parcels into which the Land is subdivided;

“Starter Home Price” means the prices published annually by the City for:

- (a) basic non-strata titled home
- (b) basic strata-titled home, and
- (c) mobile/manufactured home with pad rental

in the Kelowna market, and which will be derived from the formula set out in Schedule B and increased between Census years by the percentage increase in BCCPI from the last Census year;

“Tenancy Agreement” means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*; and

“Tenant” means a Household occupying an Affordable Rental Unit pursuant to a Tenancy Agreement, and that has a Gross Annual Income equal to or lesser than the Maximum Allowable Income.

1.2 Interpretation - In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;

- (e) the word “enactment” has the meaning given in the *Interpretation Act* on the reference date of this Agreement;
- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (h) time is of the essence;
- (i) reference to a “party” is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers; and
- (j) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

1.3 Purpose of Agreement - The Owner and the City agree that:

- (a) this Agreement is intended to serve the public interest by providing for occupancy of a certain number of Dwelling Units, of the kinds provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available;
- (b) performance of this Agreement by the Owner is a condition, as contemplated by s. 904 of the *Local Government Act*, of the Owner becoming entitled to certain density bonuses respecting development of the Land, which density bonuses the Owner acknowledges are a benefit to the Owner; and
- (c) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City should be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner.

ARTICLE 2

HOUSING AGREEMENT AND LAND USE RESTRICTIONS

2.0 Land Use Restrictions - The Owner and the City hereby covenant and agree as follows:

- (a) the Land must be used only in accordance with this Agreement;
- (b) the Dwelling Unit on the Land must be used either as an Affordable Rental Unit or Affordable Ownership Dwelling Unit, as defined in this Agreement.

ARTICLE 3

HOUSING AGREEMENT AND TRANSFER RESTRICTIONS

3.0 Purchaser Qualifications - The City and the Owner agree that the Owner must not sell or transfer, or agree to sell or transfer, any ownership interest in any Affordable Rental Unit and/or Affordable Ownership Dwelling Unit other than a full interest in the fee simple title to:

- (a) an agency or individual that will continue to ensure that the Affordable Rental Unit(s) are only occupied as Affordable Rental Unit(s) in accordance with this Agreement; or
- (b) a Household that meets the Affordable Ownership criteria contained in section 3.1(d) below.

AFFORDABLE OWNERSHIP DWELLING UNITS

OCCUPATION AND TRANSFER RESTRICTIONS

3.1 Occupation and Transfer Restrictions - The City and the Owner agree as follows:

- (a) **Prospective Purchasers** - The Owner will be solely responsible for screening prospective purchasers of an Affordable Ownership Dwelling Unit to determine whether or not they meet the Affordable Ownership criteria in accordance with this Agreement. For greater certainty, the Owner agrees that the City is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective purchaser;
- (b) **Purchase Price** - The maximum sale price of the Affordable Ownership Dwelling Unit to a Household that meets the Affordable Ownership criteria is:
 - (i) the applicable Starter Home Price; or,
 - (ii) market value of the Affordable Ownership Dwelling Unit, if the Owner has owned that unit for 10 years and the Owner has requested the City discharge this Agreement.
- (c) **Notification of this Agreement** - The Owner must disclose in every purchase and sale agreement for the Affordable Ownership Dwelling Unit, the existence of this Agreement and the occupancy and resale price restrictions applicable to that unit, and provide the prospective purchaser with a copy of this Agreement;
- (d) **Affordable Ownership criteria** - The Owner agrees that the following apply in respect of those who occupy an Affordable Ownership Dwelling Unit:
 - a. the Owner of the Affordable Ownership Dwelling Unit must be part of the Household that occupies that unit,
 - b. the Gross Annual Income of all individuals who occupy the Affordable Ownership Dwelling Unit must not exceed the Affordable Ownership income level, and
 - c. Within five days of transfer of the title of an Affordable Ownership Dwelling Unit, the new Owner of that unit must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the new Owner under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration.

- (e) **Rental only as Landlord for Affordable Rental Unit** - The Owner shall not rent or lease the Land or any Affordable Ownership Dwelling Unit on the Land, except that the Owner may rent the Affordable Ownership Dwelling Unit as an Affordable Rental Unit in accordance with sections 3.5 through 3.8 inclusive of this Agreement; and
 - (f) **Applies to all Owners** - For clarity, the restrictions in this section 3.1 shall not apply to an Owner who bought the Affordable Ownership Dwelling Unit pursuant to section 3.0(a).
- 3.2 **Statutory Declaration** - Within five days after receiving notice from the City, the Owner must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the Owner, or a knowledgeable director, officer or employee of any corporate Owner, under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration. The City may request such a statutory declaration no more than four times in any year. The Owner must submit such a statutory declaration if an Affordable Owner Dwelling Unit is sold to a new Owner.
- 3.4 **Mortgages and Mortgage Insurers** - In the event that the Affordable Ownership Dwelling Unit is subject to a mortgage or charge in favour of a lender insured by a mortgage insurer, as further defined in Schedule C (attached), the terms of Schedule C shall govern.

AFFORDABLE RENTAL UNITS

- 3.5 **Use and Occupancy For Affordable Rental Unit** - Unless the Owner is occupying the Affordable Rental Unit and/or Affordable Ownership Dwelling Unit in accordance with section 3.1, the Owner agrees with the City as follows:
- (a) the Owner must rent or lease the Affordable Rental Unit on the Land, and in no event may the Owner himself or herself occupy the Affordable Rental Unit;
 - (b) the Owner must specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to an Affordable Rental Unit, and attach a copy of this Agreement to every Tenancy Agreement; and
 - (c) the Owner will deliver a copy of the Tenancy Agreement for each Affordable Rental Unit to the City upon demand.
- 3.6 **Prospective Tenants** - The Owner will be solely responsible for screening prospective Tenants. For greater certainty, the Owner agrees that the City is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective Tenant.
- 3.7 **Damages and Rent Charge** - The Owner agrees with the City as follows:
- (a) **Damages for Breach** - for each day an Affordable Rental Unit is occupied in breach of this Agreement, the Owner must pay the City \$100.00 for each day on which the breach has occurred, as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred, but the City agrees that this section applies only if the City has given 60 days' written notice to the Owner of occupancy of

the Affordable Rental Unit in breach of this Agreement and the Owner has not cured that breach before expiry of that 60 days; and

- (b) **Statutory Declaration** - When making an application for a business license or a renewal of a business license pursuant to the City's Business License Bylaw No. 7878, or its successor, the Owner must deliver to the City a statutory declaration, substantially in the form attached as Schedule D, sworn by the Owner, or a knowledgeable director, officer or employee of any corporate Owner, under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration. Additionally, the City may request the Owner deliver to the City such a statutory declaration no more than four times in any year. The Owner must submit such a statutory declaration a minimum of once a year.

- 3.8 **Mortgages and Mortgage Insurers** - In the event that the building containing one or more Affordable Rental Unit(s) is subject to a mortgage or charge in favour of a lender insured by a mortgage insurer, as further defined in Schedule F (attached), the terms of Schedule F shall govern.

ARTICLE 4

GENERAL

- 4.0 **Notice of Housing Agreement** - For clarity, the Owner acknowledges and agrees that:

- (a) this Agreement constitutes a housing agreement entered into under s. 905 of the *Local Government Act*;
- (b) the City will file a notice of housing agreement in the LTO against title to the Land; and
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land.

- 4.1 **No Effect On Laws or Powers** - This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,
- (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement,
- (c) affect or limit any enactment relating to the use or subdivision of land, or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.

- 4.2 **Notice** - Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.

- 4.3 **Agreement Runs With the Land** - Every obligation and covenant of the Owner in this Agreement constitutes a contractual obligation by the Owner to the City in and this Agreement burdens the Land and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision or by strata plan under the *Strata Property Act*.
- 4.4 **Release** - The Owner by this Agreement releases and forever discharges the City and each of its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination of this Agreement.
- 4.5 **Hardship** - If for reasons of hardship, the Owner cannot comply with the requirements of this Agreement in relation to any Affordable Dwelling Unit, the Owner may request a temporary waiver or alteration of the terms in this Agreement in respect of that unit. This request must be delivered to Council in writing, explain the nature and circumstances of the hardship involved, the reasons why the Owner cannot comply, and the hardship that compliance would cause. The Owner agrees that Council is under no obligation to grant any relief, and may proceed with all remedies available under this Agreement, and at law and in equity, despite the Owner's request or the hardship involved, and the relief, if any, is to be determined by Council, acting reasonably in its sole discretion.
- 4.6 **Joint Venture** - Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.
- 4.7 **Limitation on Owner's Obligations** - The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
- 4.8 **Waiver** - An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
- 4.9 **Equitable Remedies** - The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement, that the City is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement, and further that this clause is reasonable given the public interest in restricting the occupancy and disposition of each Affordable Ownership Dwelling Unit on the Land in accordance with this Agreement.
- 4.10 **Further Acts** - The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 4.11 **Severance** - If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

- 4.12 **No Other Agreements** - This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.
- 4.13 **Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.
- 4.14 **Enurement** - This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "City" is a reference also to the elected and appointed officials, employees and agents of the City.
- 4.15 **Deed and Contract** - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

IN WITNESS WHEREOF the parties hereunto have executed this Agreement on the date and year first above written.

SIGNED, SEALED & DELIVERED in the presence of:

Markit
Signature of Witness

MARDELLE A. CORBETT
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
Print Name 1435 Water Street, Kelowna B.C.

Address

Occupation

SIGNED, SEALED & DELIVERED in the presence of:

Signature of Witness

Print Name

Address

Occupation

Patricia Swain

PATRICIA SWAIN

CITY OF KELOWNA
by its authorized signatories:

Mayor

City Clerk

SCHEDULE A

[AFFORDABLE OWNERSHIP DWELLING UNITS]

CANADA) IN THE MATTER OF A HOUSING AGREEMENT
) WITH THE CITY OF KELOWNA ("Housing
 PROVINCE OF BRITISH COLUMBIA) Agreement") for the land legally described
) as *[INSERT LEGAL]*

I, _____, of _____, do solemnly declare:

3. This declaration is made with respect to the Dwelling Unit ("Unit") legally or otherwise described as follows:

[INSERT LEGAL DESCRIPTION AND CIVIC ADDRESS].

4. That I am the Owner of the Unit and make this declaration to the best of my personal knowledge.

[or]
 That I am the _____ [director, officer, employee] of the Owner of the Unit and [make this declaration to the best of my personal knowledge] [or: have been informed by _____ and believe the statements in this declaration to be true].

5. This declaration is made pursuant to the Housing Agreement in respect of the Unit.

6. The City's published applicable Starter Home Price for the Unit is \$ _____.

7. For the period from _____, _____ to _____, _____ the Unit was occupied by the following persons, whose names and addresses appear below, and in accordance with the Housing Agreement

[INSERT NAMES AND AGES OF ALL OCCUPANTS WITH ADDRESS OF UNIT].

8. The Annual Gross Income of all of the individuals described in paragraph 5 is \$ _____. This amount does not exceed the income defined under Clause 9 (below).

9. The annual median income of a 2 or more person City of Kelowna household, as determined in accordance with the federal census and increased between census periods by the percentage increase in the annual average consumer price index for all items in British Columbia using 2002 = 100 as a base, published by the City is \$ _____.

10. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

SWORN BEFORE ME at the City of _____)
 _____, in the _____)
 _____, this ___ day of _____)
 _____, _____.)

) Signature of person making
) declaration

 A Commissioner for taking affidavits for
 British Columbia)

SCHEDULE B

**[AFFORDABLE OWNERSHIP DWELLING UNITS / STARTER HOME PRICE
CALCULATION BY CITY]**

“Affordable Ownership” is based on the income level at which a household would be capable of entering the Kelowna ownership market. This is equivalent to the “starter home price” and is derived based on the purchase ability at the median income level for all two or more person households from the most recent Census, assuming 30 % of gross household income expenditure for shelter. The starter home price will be increased annually between Census years by the percentage increase in the B.C. Consumer Price Index (BCCPI), be given for a non-strata-titled home, a strata-titled home and a mobile /manufactured home, and be published annually by the City.

On the basis of policy direction in the City of Kelowna Official Community Plan By-law 7600, (policy 8.1.16) the City has committed to calculating and providing the starter home prices on an annual basis published in The Housing Resources Handbook: Benchmarks and Resources for Affordable, Special Needs and Rental Housing. The following Methodology is used to calculate the starter home prices in the City of Kelowna every five years. Between Census years, the numbers for median income and starter home prices are increased annually using the BCCPI

STARTER HOME PRICE CALCULATION

Line		Single Family	Strata	Manufactured Home
Insert:				
1	Gross Income			
2	Mortgage Rate			
3	Insurance Rate			
4	Mill Rate			
5	Property Tax			
6	Homeowner Grant			
7	Strata Fees / Mobile Home Pad Rental			
8	Annual Heating Costs			
9	Annual Utility Costs			
Calculate:				
10	Annual Housing Cost (30% of Income)			
11	Yearly Mortgage Payment			
12	Monthly Mortgage Payment			
13	Total Home Financing			
14	Mortgage Insurance Cost			
15	Mortgage Financing (95%)			
16	Home Price (Starter Home)			

The process used to calculate the Starter Home Price in the City of Kelowna is as follows:

1. COLLECT THE FOLLOWING DATA FROM THE SOURCES LISTED AND INSERT INTO THE TABLE:

1.1 Gross Income (Line 1)

- When new Census information is available, the figure for median income of a two or more person household in Kelowna is obtained and used as the gross income. Gross Income is the aggregated taxable income (line 260 of income tax T1 General Form) of all residents 15 years and older residing in the household. Income data recorded by the Census, however, is usually for the year prior to the Census (for example, the 2001 Census recorded 2000 income levels). The income level may therefore need to be increased to the most recent year, using the BCCPI.

1.2 Mortgage Rate (Line 2)

- The mortgage rate is equal to the Bank of Canada Prime Lending Rate, plus 3

1.3 Insurance Rate (Line 3)

- The insurance rate is equivalent to Canada Mortgage and Housing Corporation (CMHC) mortgage insurance rate for a mortgage with a 5% down payment.

1.4 Mill Rate (Line 4)

- The current mill rate for residential taxation used by the City of Kelowna.

1.5 Property Tax (Line 5)

- The property tax figure is estimated based on the previous figures used in the table. This figure may be later adjusted based on the outcome of the final calculations

1.6 Homeowners Grant (Line 6)

- Homeowner grants are offered by the provincial government amount. Establish the standard grant amount.

1.7 Strata Fees and/or Pad Rentals (Line 7)

- Comparing strata fees, as found using MLS listings for Kelowna and/or as indicated by a local realtor, estimate the average strata fee.
- Using sample from mobile home sites in the city, estimate the average mobile home pad rental fees

1.8 Heating Costs (Line 8)

- Using local data, determine Heating Costs using CMHC methodologies. Subsequently, heating costs are adjusted in accordance with inflation as determined using the BCCPI percentage change in energy costs from the previous year.

1.9 Utilities Costs (Line 9)

- Using local data, determine Utilities Costs using CMHC methodologies. Subsequently, utilities costs are adjusted in accordance with inflation as determined using the BCCPI percentage change in electricity from the previous year. Phone, cable/satellite, and internet costs are not included in the utilities cost calculation.
- Note if there were changes in sewer and water rates from the City and adjust accordingly.

2. **CALCULATE THE FOLLOWING NUMBERS AND INSERT INTO THE TABLE:**2.1 Annual Housing Cost (Line 10)

- The annual housing cost is based on the assumption that 30% of gross income may be spent on housing.

$$\text{Gross Income (Line 1)} \times 0.30 = \text{Annual Housing Cost}$$

2.2 Annual Mortgage Payment (Line 11)

- The annual mortgage payment is equal to the annual housing costs (Line 10) minus the heating costs, utility costs, strata fees/pad rent, and the total property tax payment amount (i.e. property tax minus the homeowner grant).

$$\begin{aligned} & \text{Annual Housing Cost} \\ & - \text{Heating Cost} \\ & - \text{Utility Costs} \\ & - \text{Strata/Pad Rental Fees} \\ & - \underline{\text{(Property Tax - Homeowner Grant)}} \\ & = \text{Annual Mortgage Payment} \end{aligned}$$

2.3 Monthly Mortgage Payment (Line 12)

- The annual mortgage payment is spread out over 12 months:

$$\text{Annual Mortgage Payment} \div 12 = \text{Monthly Mortgage Payment}$$

2.4 Total Home Financing (Line 13)

- The total financing required is determined by using a mortgage calculator (such as <http://www.mortgages-bc.com/calculator.shtml>). Assume a 5 year renewable/25 year mortgage, and insert the interest rate as per Line 2. Enter an estimate in the mortgage amount. Adjust the mortgage amount until the monthly payment matches, as close as possible, the monthly mortgage payment in Line 12. This amount is the total financing required.

2.5 Mortgage Insurance (Line 14)

- The mortgage insurance amount is calculated, using the insurance rate from Line 3 as follows:

$$\text{mortgage financing (Line 13)} \times \frac{1}{(\text{insurance rate} + 1) \div \text{insurance rate}}$$

$$= \text{mortgage insurance (Line 14)}$$

2.6 Mortgage Financing (95%) (Line 15)

- Mortgage Financing (95%) is the home financing required based on a 5% down payment and is calculated as follows:

$$\text{mortgage insurance (Line 14)} \div \text{Insurance Rate (Line 3)}$$

$$= \text{mortgage financing at 95% (Line 15)}$$

2.7 Starter Home Price (Line 16):

- The Starter Home Price is calculated as follows:

$$\frac{\text{Mortgage financing (Line 15)} \times 100}{95} = \text{starter home price}$$

2.8 Confirmation of Starter Home Price

- The starter home price is then confirmed using the mill rate (Line 4) to calculate the property tax as follows:

$$\text{starter home price (Line 16)} \times \text{mill rate (Line 4)} = \text{property tax}$$

- Compare this property tax figure to the property tax figure used in Line 5. If the numbers are not similar, adjust the property tax (Line 5) to number
-

closer to the figure above and repeat the above calculations (Lines 13 through 16).

- Next, using the starter home price, as re-calculated above, work through the table backwards in order to calculate the gross annual income. The gross annual income calculated should be equal to the gross annual income figure representing the median income of a two or more person household in Kelowna (Line 1). If the numbers are not the same, continue to adjust the property tax figure, and repeat the calculations, until the gross annual income figures match.
- Update the figures using the BCCPI if necessary.

SAMPLE ONLY

The following is the starter home price calculation, based on the median income figure for a Kelowna 2 or more person household obtained from the 2006 Census. Income from the Census was for the year 2005 and has been increased using the BC Consumer Price Index to 2007. All the other calculations are based on 2007 rates (e.g. mortgage, mortgage insurance, property tax, utility costs, strata fees).

STARTER HOME CALCULATION

Line		Single Family	Strata	Manufactured Home
Insert:				
1	Gross Income	63426	63426	63426
2	Mortgage Rate (5 year)	0.0775	0.0775	0.0775
3	Insurance Rate	3.1%	3.1%	3.1%
4	Mill Rate	0.0056898	0.0056898	0.0056898
5	Property Tax	1182.72	1115.39	1064.56
6	Homeowner Grant	570	570	570
7	Strata Fees / Mobile Home Pad Rental	0	2100	3600
8	Annual Heating Costs	2012	2012	2012
9	Annual Utility Costs	1947	1947	1947
Calculate:				
10	Annual Housing Cost (30% of Income)	19027.80	19027.80	19027.80
11	Yearly Mortgage Payment	14456.08	12423.41	10974.24
12	Monthly Mortgage Payment	1204.67	1035.28	914.52
13	Total Home Financing	203,595	192,005	183,255
14	Mortgage Insurance Cost	6121.68	5773.17	5510.10
15	Mortgage Financing (95%)	197,473.65	186,231.35	177,745.00
16	Home Price (Starter Home)	207,867.00	196,033.00	187,100.00

Calculation to Update Starter Home Prices for 2008

In 2008, the numbers in the table (page 2) are increased, as in step 1, to generate the following numbers:

2008 median income = 2007 median income (\$63426 X 1.021 (based on BCCPI) = \$64,758

Single Family Starter Home 2008 = \$207,867 X 1.021 = \$212,232

Strata Titled Starter Home 2008 = \$196,033. X 1.021 = \$200,150

Mobile / Modular Starter Home 2003 = \$187,100. X 1.021 = \$191,029

**SCHEDULE C
MORTGAGE and MORTGAGE INSURER AGREEMENT TERMS**

In the event that an Owner, who met the Affordable Ownership criteria, enters into a mortgage in respect of an Affordable Ownership Dwelling Unit, the Owner, the Lender, the Mortgage Insurer, and the City agree to the following terms:

In this Agreement:

"Lender" means a mortgagee or holder of a financial charge (the "Charge") that is registered against the title to the Affordable Ownership Dwelling Unit;

"Mortgage Insurer" means Canada Mortgage and Housing Corporation or another company or organization that has an interest in the Charge and that has entered into a mortgage default insurance agreement or other mortgage loan insurance arrangement with a Lender;

"Owner" means the current Owner meeting the Affordable Ownership criteria in possession of the Affordable Ownership Dwelling Unit; and

"Property" means the Affordable Ownership Dwelling Unit and any real property upon which it is located.

In the event of default by the Owner under the Charge, where a Lender or Mortgage Insurer holding a Charge on the Property, notifies the City that the Owner is in default under its Charge, the City shall have a sixty (60) day period beginning on the date of such notice to take such steps as the City deems necessary to preserve the Housing Agreement. Following the sixty (60) day period, if the Owner's default is not cured, the Lender or Mortgage Insurer can enforce the rights under the Charge, including the right to foreclose or sell the Property. Upon sale or foreclosure of the Owner's Property by the Lender or Mortgage Insurer, the Housing Agreement shall cease to apply to the Property and notice shall be discharged from the title to the Property by the City. Notwithstanding the foregoing, if the proceeds of sale from the foreclosure or sale of the Property by the Lender or Mortgage Insurer exceed the balance due under the Charge and related costs, including without limitation, charges, taxes, commissions, utilities and other expenses regarding the Property and claim under the loan insurance, as determined by CMHC, such excess funds shall, subject to applicable provincial or federal legislation, forthwith be paid to the Owner up to the Starter Home Price in the Housing Agreement, and the balance payable to the City, for its own use absolutely.

SCHEDULE D
[AFFORDABLE RENTAL UNITS]

CANADA)	IN THE MATTER OF A HOUSING AGREEMENT
PROVINCE OF BRITISH COLUMBIA)	WITH THE CITY OF KELOWNA ("Housing
)	Agreement") for the land legally described
)	as [INSERT LEGAL]
)	
)	
)	
)	
)	

I, _____, of _____, do solemnly declare:

11. This declaration is made with respect to the Dwelling Unit ("Unit") legally or otherwise described as follows:

[INSERT LEGAL DESCRIPTION AND CIVIC ADDRESS].

12. That I am the Owner of the Unit and make this declaration to the best of my personal knowledge.

[or]

That I am the _____ [director, officer, employee] of the Owner of the Unit and [make this declaration to the best of my personal knowledge] [or: have been informed by _____ and believe the statements in this declaration to be true].

13. This declaration is made pursuant to the Housing Agreement in respect of the Unit.

14. The average affordable rent for Kelowna from the most recent annual Canada Mortgage and Housing Corporation (CMHC) Rental Market Report for an apartment of the Unit's size is \$_____ per month, including the cost of heat, water, and electricity;

5. The rent charged each month for the Unit is as follows:

- (d) the monthly rent on the date 365 days before the date of this statutory declaration was \$_____ per month;
- (e) the monthly rent on the date of this statutory declaration is: \$_____; and
- (f) the proposed or actual monthly rent that will be payable on the date that is 90 days after the date of this statutory declaration is \$_____.

6. For the period from _____, _____ to _____, _____ the Unit was occupied by the following persons, whose names and addresses appear below, and in accordance with the Housing Agreement:

[INSERT NAMES AND AGES OF ALL OCCUPANTS WITH ADDRESS OF UNIT].

7. The gross annual income of all individuals aged 15 and over who reside in the Unit is equal to or less than the maximum allowable income \$_____, being the average affordable rent set out in Clause 4 above multiplied by 40.
8. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

SWORN BEFORE ME at the City of _____)
_____ in the)
_____, this ___ day of ___)
____, ____)
_____)
_____) **Signature of person making declaration**
_____)
A Commissioner for taking affidavits for)
British Columbia)

SCHEDULE E
[AFFORDABLE RENTAL CALCULATIONS]

The "Affordable Rental" rate is based on the premise that households that spend 30% of their income on basic shelter costs to afford rents equivalent to the average rents published annually by Canada Mortgage and Housing Corporation (CMHC) for Kelowna are facing a housing shortage. This is the direction behind the City of Kelowna Official Community Plan, Bylaw 7600 (policy 8.1.16). This Housing Agreement is a method of creating affordable housing for such households.

The City of Kelowna will publish the Average Monthly Rents for different sizes of Affordable Rental Dwelling Units periodically, which will be the average rents for Kelowna from the annual CMHC Rental Market Report.

The Owner may not permit a Household whose Gross Annual Income is greater than the Maximum Annual Income, as calculated according to the formula below, to occupy an Affordable Rental Dwelling Unit. Gross Annual Income is aggregated taxable income (line 260 of income tax T1 General Form) of all residents 15 years and older residing in the Dwelling Unit. The Maximum Allowable Income is calculated based on the Dwelling Unit size by number of bedrooms that the Household rents. Rent, for affordability purposes, must include heat, electricity and water.

The formula to calculate the Maximum Annual Income permitted for a Household to occupy an Affordable Rental Dwelling Unit is as follows:

$$\text{Maximum Annual Income} = \text{Average Monthly Rent (CMHC)} \times 40$$

This is an abbreviated version of:

$$(\text{Maximum Annual Income} \times 30\%) = (\text{Average Monthly Rent} \times 12 \text{ months})$$

SAMPLE:

Average Monthly Rents of All Private Apartments in the City of Kelowna, 2011
(Canada Mortgage and Housing Corporation Market Rental Survey- City of Kelowna)

	Bachelor	One Bedroom	Two Bedroom	Three Bedroom +
Average Monthly Rent	\$586	\$734	\$914	\$1,068

The Maximum Annual Income Calculations for 2008:

- 1 Bedroom Unit
Maximum Annual Income = \$586 X 40 = \$23,440
- 2 Bedroom Unit
Maximum annual income = \$914 X 40 = \$29,360
- 3 Bedroom Unit
Maximum annual income = \$1,068 X 40 = \$42,720

**SCHEDULE F
MORTGAGE and MORTGAGE INSURER AGREEMENT TERMS**

In the event that an Owner, of a property containing one or more Affordable Rental Unit(s) to which this Housing Agreement pertains, enters into a mortgage in respect of the property in question, the Owner, the Lender, the Mortgage Insurer, and the City agree to the following terms:

In this Agreement

"Lender" means a mortgagee or holder of a financial charge (the "Charge") that is registered against the title to the Property;

"Mortgage Insurer" means Canada Mortgage and Housing Corporation or another company or organization that has an interest in the Charge and that has entered into a mortgage default insurance agreement or other mortgage loan insurance arrangement with a Lender; and

"Owner" means the current Owner of the Property

"Property" means the Affordable Rental Units and any real property upon which they are located, identified in the Housing Agreement attached hereto.

In the event of default by the Owner under the Charge, where a Lender or Mortgage Insurer holding a Charge on the Property, notifies the City that the Owner is in default under its Charge, the City shall have a sixty (60) day period beginning on the date of such notice to take such steps as the City deems necessary to preserve the Housing Agreement. Following the sixty (60) day period, if the Owner's default is not cured, the Lender or Mortgage Insurer can enforce the rights under the Charge, including the right to foreclose or sell the Property.

Upon sale or foreclosure of the Owner's Property by the Lender or Mortgage Insurer, the Housing Agreement shall cease to apply to the Property and shall be discharged from the title to the Property by the City.

Notwithstanding the foregoing, if the proceeds of sale from the Lender or Mortgage Insurer exceed the loss under the Charge including all costs and expenses incurred, as determined by the Lender or Mortgage Insurer, such excess amount shall be paid to the City, subject to any prior encumbrances or applicable provincial or federal legislation.

END OF DOCUMENT

Schedule "C"

AFFORDABLE RENTAL AND/OR OWNER HOUSING AGREEMENT

THIS AGREEMENT dated for reference August 9, 2012 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

PID: 027-889-319
Strata Lot 40, District Lot 141 ODYD KAS3658;

And is

BETWEEN:

Mindy Marie Lunzman and James Christel Norris
217 – 1550 Dickson Avenue
Kelowna, BC, V1Y 9Y8, and

Violet Ann Lunzman and Paul Brian Lunzman
104-2130 Vasile Road
Kelowna, BC V1Y 6H5

(collectively, the "Owner")

AND:

CITY OF KELOWNA, a local government incorporated pursuant to the *Community Charter* and having its offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

("City")

GIVEN THAT:

- A. The City may, pursuant to section 905(1) of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, and availability of the housing units on the land or construction on land;
- B. The Owner and the City wish to enter into this Agreement to provide for affordable ownership and/or affordable rental housing on the terms and conditions set out in this Agreement, and agree that this Agreement is a housing agreement under s. 905 of the *Local Government Act*; and
- C. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement.

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the City and Owner agree, as a housing agreement between the Owner and the City under s. 905(1) of the *Local Government Act*, as follows:

ARTICLE 1

INTERPRETATION

1.1 Definitions -

"Affordable Ownership" means the income level, published annually by the City, at which a Household would be capable of buying a home at the Starter Home Price, and is based on the purchase ability at the median income level from the most recent federal census for all two or more person households, assuming 30% of gross household income expenditure for shelter;

"Affordable Ownership Dwelling Unit" means a Dwelling Unit to be sold for the Starter Home Price to a Household that meets the Affordable Ownership criteria;

"Affordable Rental" is the affordable rental rate published periodically by the City, being a calculation of average rents for Kelowna, using data from the annual Canada Mortgage and Housing Corporation ("CMHC") Rental Market Report as set out in Schedule E;

"Affordable Rental Unit" means a Dwelling Unit that is available for rent at an Affordable Rental rate;

"BCCPI" means the All-Items Average Annual Consumer Price Index for British Columbia, published yearly by Statistics Canada, or its successor in function, where 2002 = 100;

"Caregiver" means an individual who provides assistance with the performance of the personal functions and activities necessary for daily living that a person is unable to perform efficiently for himself or herself;

"City" means the City of Kelowna;

"Dwelling Unit" means accommodation providing sleeping rooms, washrooms, and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi permanently for a Household. This use does not include a room in a hotel or a motel;

"Gross Annual Income" means the sum of all taxable incomes, being the amount identified as taxable income on the most recent income tax return (line 260 of the income tax T1 General Form), of all individuals 15 years and older that reside in the Household;

"Household" means

- (a) a person;

- (b) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;
- (c) a group of not more than five persons, including boarders, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or
- (d) a combination of (b) and (c), provided that the combined total does not include more than 3 persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities.

In addition, a household may also include up to one Caregiver or nanny;

“Land” means the land described herein;

“LTO” means the Kamloops Land Title Office or its successor;

“Maximum Allowable Income” means, in respect of an Affordable Rental Dwelling Unit, the threshold income level calculated according to the formula set out in Schedule E;

“Official Community Plan” means the City of Kelowna Official Community Plan Bylaw No. 7600, or its successor bylaw;

“Owner” means the registered owner of the Land from time to time and any parcels into which the Land is subdivided;

“Starter Home Price” means the prices published annually by the City for:

- (a) basic non-strata titled home
- (b) basic strata-titled home, and
- (c) mobile/manufactured home with pad rental

in the Kelowna market, and which will be derived from the formula set out in Schedule B and increased between Census years by the percentage increase in BCCPI from the last Census year;

“Tenancy Agreement” means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*; and

“Tenant” means a Household occupying an Affordable Rental Unit pursuant to a Tenancy Agreement, and that has a Gross Annual Income equal to or lesser than the Maximum Allowable Income.

1.2 Interpretation - In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;

- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) the word "enactment" has the meaning given in the *Interpretation Act* on the reference date of this Agreement;
- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (h) time is of the essence;
- (i) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers; and
- (j) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

1.3 Purpose of Agreement - The Owner and the City agree that:

- (a) this Agreement is intended to serve the public interest by providing for occupancy of a certain number of Dwelling Units, of the kinds provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available;
- (b) performance of this Agreement by the Owner is a condition, as contemplated by s. 904 of the *Local Government Act*, of the Owner becoming entitled to certain density bonuses respecting development of the Land, which density bonuses the Owner acknowledges are a benefit to the Owner; and
- (c) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City should be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner.

ARTICLE 2

HOUSING AGREEMENT AND LAND USE RESTRICTIONS

2.0 Land Use Restrictions - The Owner and the City hereby covenant and agree as follows:

- (a) the Land must be used only in accordance with this Agreement;
- (b) the Dwelling Unit on the Land must be used either as an Affordable Rental Unit or Affordable Ownership Dwelling Unit, as defined in this Agreement.

ARTICLE 3

HOUSING AGREEMENT AND TRANSFER RESTRICTIONS

3.0 Purchaser Qualifications - The City and the Owner agree that the Owner must not sell or transfer, or agree to sell or transfer, any ownership interest in any Affordable Rental Unit and/or Affordable Ownership Dwelling Unit other than a full interest in the fee simple title to:

- (a) an agency or individual that will continue to ensure that the Affordable Rental Unit(s) are only occupied as Affordable Rental Unit(s) in accordance with this Agreement; or
- (b) a Household that meets the Affordable Ownership criteria contained in section 3.1(d) below.

AFFORDABLE OWNERSHIP DWELLING UNITS

OCCUPATION AND TRANSFER RESTRICTIONS

3.1 Occupation and Transfer Restrictions - The City and the Owner agree as follows:

- (a) **Prospective Purchasers** - The Owner will be solely responsible for screening prospective purchasers of an Affordable Ownership Dwelling Unit to determine whether or not they meet the Affordable Ownership criteria in accordance with this Agreement. For greater certainty, the Owner agrees that the City is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective purchaser;
- (b) **Purchase Price** - The maximum sale price of the Affordable Ownership Dwelling Unit to a Household that meets the Affordable Ownership criteria is:
 - (i) the applicable Starter Home Price; or,
 - (ii) market value of the Affordable Ownership Dwelling Unit, if the Owner has owned that unit for 10 years and the Owner has requested the City discharge this Agreement.
- (c) **Notification of this Agreement** - The Owner must disclose in every purchase and sale agreement for the Affordable Ownership Dwelling Unit, the existence of this Agreement and the occupancy and resale price restrictions applicable to that unit, and provide the prospective purchaser with a copy of this Agreement;
- (d) **Affordable Ownership criteria** - The Owner agrees that the following apply in respect of those who occupy an Affordable Ownership Dwelling Unit:
 - a. the Owner of the Affordable Ownership Dwelling Unit must be part of the Household that occupies that unit,
 - b. the Gross Annual Income of all individuals who occupy the Affordable Ownership Dwelling Unit must not exceed the Affordable Ownership income level, and
 - c. Within five days of transfer of the title of an Affordable Ownership Dwelling Unit, the new Owner of that unit must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the new Owner under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration.

- (e) **Rental only as Landlord for Affordable Rental Unit** - The Owner shall not rent or lease the Land or any Affordable Ownership Dwelling Unit on the Land, except that the Owner may rent the Affordable Ownership Dwelling Unit as an Affordable Rental Unit in accordance with sections 3.5 through 3.8 inclusive of this Agreement; and
 - (f) **Applies to all Owners** - For clarity, the restrictions in this section 3.1 shall not apply to an Owner who bought the Affordable Ownership Dwelling Unit pursuant to section 3.0(a).
- 3.2 **Statutory Declaration** - Within five days after receiving notice from the City, the Owner must deliver to the City a statutory declaration, substantially in the form attached as Schedule A, sworn by the Owner, or a knowledgeable director, officer or employee of any corporate Owner, under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration. The City may request such a statutory declaration no more than four times in any year. The Owner must submit such a statutory declaration if an Affordable Owner Dwelling Unit is sold to a new Owner.
- 3.4 **Mortgages and Mortgage Insurers** - In the event that the Affordable Ownership Dwelling Unit is subject to a mortgage or charge in favour of a lender insured by a mortgage insurer, as further defined in Schedule C (attached), the terms of Schedule C shall govern.

AFFORDABLE RENTAL UNITS

- 3.5 **Use and Occupancy For Affordable Rental Unit** - Unless the Owner is occupying the Affordable Rental Unit and/or Affordable Ownership Dwelling Unit in accordance with section 3.1, the Owner agrees with the City as follows:
- (a) the Owner must rent or lease the Affordable Rental Unit on the Land, and in no event may the Owner himself or herself occupy the Affordable Rental Unit;
 - (b) the Owner must specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to an Affordable Rental Unit, and attach a copy of this Agreement to every Tenancy Agreement; and
 - (c) the Owner will deliver a copy of the Tenancy Agreement for each Affordable Rental Unit to the City upon demand.
- 3.6 **Prospective Tenants** - The Owner will be solely responsible for screening prospective Tenants. For greater certainty, the Owner agrees that the City is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective Tenant.
- 3.7 **Damages and Rent Charge** - The Owner agrees with the City as follows:
- (a) **Damages for Breach** - for each day an Affordable Rental Unit is occupied in breach of this Agreement, the Owner must pay the City \$100.00 for each day on which the breach has occurred, as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred, but the City agrees that this section applies only if the City has given 60 days' written notice to the Owner of occupancy of

the Affordable Rental Unit in breach of this Agreement and the Owner has not cured that breach before expiry of that 60 days; and

- (b) **Statutory Declaration** - When making an application for a business license or a renewal of a business license pursuant to the City's Business License Bylaw No. 7878, or its successor, the Owner must deliver to the City a statutory declaration, substantially in the form attached as Schedule D, sworn by the Owner, or a knowledgeable director, officer or employee of any corporate Owner, under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration. Additionally, the City may request the Owner deliver to the City such a statutory declaration no more than four times in any year. The Owner must submit such a statutory declaration a minimum of once a year.

- 3.8 **Mortgages and Mortgage Insurers** - In the event that the building containing one or more Affordable Rental Unit(s) is subject to a mortgage or charge in favour of a lender insured by a mortgage insurer, as further defined in Schedule F (attached), the terms of Schedule F shall govern.

ARTICLE 4

GENERAL

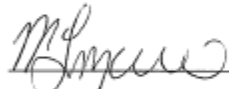
- 4.0 **Notice of Housing Agreement** - For clarity, the Owner acknowledges and agrees that:
 - (a) this Agreement constitutes a housing agreement entered into under s. 905 of the *Local Government Act*;
 - (b) the City will file a notice of housing agreement in the LTO against title to the Land; and
 - (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land.
- 4.1 **No Effect On Laws or Powers** - This Agreement does not:
 - (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,
 - (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement,
 - (c) affect or limit any enactment relating to the use or subdivision of land, or
 - (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.
- 4.2 **Notice** - Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.


- 4.3 **Agreement Runs With the Land** - Every obligation and covenant of the Owner in this Agreement constitutes a contractual obligation by the Owner to the City in and this Agreement burdens the Land and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision or by strata plan under the *Strata Property Act*.
- 4.4 **Release** - The Owner by this Agreement releases and forever discharges the City and each of its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination of this Agreement.
- 4.5 **Hardship** - If for reasons of hardship, the Owner cannot comply with the requirements of this Agreement in relation to any Affordable Dwelling Unit, the Owner may request a temporary waiver or alteration of the terms in this Agreement in respect of that unit. This request must be delivered to Council in writing, explain the nature and circumstances of the hardship involved, the reasons why the Owner cannot comply, and the hardship that compliance would cause. The Owner agrees that Council is under no obligation to grant any relief, and may proceed with all remedies available under this Agreement, and at law and in equity, despite the Owner's request or the hardship involved, and the relief, if any, is to be determined by Council, acting reasonably in its sole discretion.
- 4.6 **Joint Venture** - Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.
- 4.7 **Limitation on Owner's Obligations** - The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
- 4.8 **Waiver** - An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
- 4.9 **Equitable Remedies** - The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement, that the City is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement, and further that this clause is reasonable given the public interest in restricting the occupancy and disposition of each Affordable Ownership Dwelling Unit on the Land in accordance with this Agreement.
- 4.10 **Further Acts** - The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 4.11 **Severance** - If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

- 4.12 **No Other Agreements** - This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.
- 4.13 **Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.
- 4.14 **Enurement** - This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "City" is a reference also to the elected and appointed officials, employees and agents of the City.
- 4.15 **Deed and Contract** - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

IN WITNESS WHEREOF the parties hereunto have executed this Agreement on the date and year first above written.

SIGNED, SEALED & DELIVERED in the presence of:)


MINDY MARIE LUNZMAN


Signature of Witness)


JAMES CHRISTEL NORRIS

GOSKO KRAWJOVIC
Print Name)

Address)

682 ALBERNI AV
KAMLOOPE, B.C.
Occupation)

SIGNED, SEALED & DELIVERED in the presence of:)


VIOLET ANN LUNZMAN

Signature of Witness)


PAUL BRIAN LUNZMAN

Print Name)

Address)

Occupation)

SIGNED, SEALED & DELIVERED in the presence of:)
)
)
_____)
Signature of Witness)
)
)
_____)
Print Name)
)
)
_____)
Address)
)
_____)
Occupation)

CITY OF KELOWNA
by its authorized signatories:
_____)
Mayor
_____)
City Clerk

SCHEDULE B

**[AFFORDABLE OWNERSHIP DWELLING UNITS / STARTER HOME PRICE
CALCULATION BY CITY]**

“Affordable Ownership” is based on the income level at which a household would be capable of entering the Kelowna ownership market. This is equivalent to the “starter home price” and is derived based on the purchase ability at the median income level for all two or more person households from the most recent Census, assuming 30 % of gross household income expenditure for shelter. The starter home price will be increased annually between Census years by the percentage increase in the B.C. Consumer Price Index (BCCPI), be given for a non-strata-titled home, a strata-titled home and a mobile /manufactured home, and be published annually by the City.

On the basis of policy direction in the City of Kelowna Official Community Plan By-law 7600, (policy 8.1.16) the City has committed to calculating and providing the starter home prices on an annual basis published in The Housing Resources Handbook: Benchmarks and Resources for Affordable, Special Needs and Rental Housing. The following Methodology is used to calculate the starter home prices in the City of Kelowna every five years. Between Census years, the numbers for median income and starter home prices are increased annually using the BCCPI

STARTER HOME PRICE CALCULATION

Line		Single Family	Strata	Manufactured Home
Insert:				
1	Gross Income			
2	Mortgage Rate			
3	Insurance Rate			
4	Mill Rate			
5	Property Tax			
6	Homeowner Grant			
7	Strata Fees / Mobile Home Pad Rental			
8	Annual Heating Costs			
9	Annual Utility Costs			
Calculate:				
10	Annual Housing Cost (30% of Income)			
11	Yearly Mortgage Payment			
12	Monthly Mortgage Payment			
13	Total Home Financing			
14	Mortgage Insurance Cost			
15	Mortgage Financing (95%)			
16	Home Price (Starter Home)			

The process used to calculate the Starter Home Price in the City of Kelowna is as follows:

1. COLLECT THE FOLLOWING DATA FROM THE SOURCES LISTED AND INSERT INTO THE TABLE:

1.1 Gross Income (Line 1)

- When new Census information is available, the figure for median income of a two or more person household in Kelowna is obtained and used as the gross income. Gross Income is the aggregated taxable income (line 260 of income tax T1 General Form) of all residents 15 years and older residing in the household. Income data recorded by the Census, however, is usually for the year prior to the Census (for example, the 2001 Census recorded 2000 income levels). The income level may therefore need to be increased to the most recent year, using the BCCPI.

1.2 Mortgage Rate (Line 2)

- The mortgage rate is equal to the Bank of Canada Prime Lending Rate, plus 3

1.3 Insurance Rate (Line 3)

- The insurance rate is equivalent to Canada Mortgage and Housing Corporation (CMHC) mortgage insurance rate for a mortgage with a 5% down payment.

1.4 Mill Rate (Line 4)

- The current mill rate for residential taxation used by the City of Kelowna.

1.5 Property Tax (Line 5)

- The property tax figure is estimated based on the previous figures used in the table. This figure may be later adjusted based on the outcome of the final calculations

1.6 Homeowners Grant (Line 6)

- Homeowner grants are offered by the provincial government amount. Establish the standard grant amount.

1.7 Strata Fees and/or Pad Rentals (Line 7)

- Comparing strata fees, as found using MLS listings for Kelowna and/or as indicated by a local realtor, estimate the average strata fee.
- Using sample from mobile home sites in the city, estimate the average mobile home pad rental fees

1.8 Heating Costs (Line 8)

- Using local data, determine Heating Costs using CMHC methodologies. Subsequently, heating costs are adjusted in accordance with inflation as determined using the BCCPI percentage change in energy costs from the previous year.

1.9 Utilities Costs (Line 9)

- Using local data, determine Utilities Costs using CMHC methodologies. Subsequently, utilities costs are adjusted in accordance with inflation as determined using the BCCPI percentage change in electricity from the previous year. Phone, cable/satellite, and internet costs are not included in the utilities cost calculation.
- Note if there were changes in sewer and water rates from the City and adjust accordingly.

2. CALCULATE THE FOLLOWING NUMBERS AND INSERT INTO THE TABLE:

2.1 Annual Housing Cost (Line 10)

- The annual housing cost is based on the assumption that 30% of gross income may be spent on housing.

$$\text{Gross Income (Line 1)} \times 0.30 = \text{Annual Housing Cost}$$

2.2 Annual Mortgage Payment (Line 11)

- The annual mortgage payment is equal to the annual housing costs (Line 10) minus the heating costs, utility costs, strata fees/pad rent, and the total property tax payment amount (i.e. property tax minus the homeowner grant).

$$\begin{aligned} &\text{Annual Housing Cost} \\ &- \text{Heating Cost} \\ &- \text{Utility Costs} \\ &- \text{Strata/Pad Rental Fees} \\ &- \underline{\text{(Property Tax - Homeowner Grant)}} \\ &= \text{Annual Mortgage Payment} \end{aligned}$$

2.3 Monthly Mortgage Payment (Line 12)

- The annual mortgage payment is spread out over 12 months:

$$\text{Annual Mortgage Payment} \div 12 = \text{Monthly Mortgage Payment}$$

2.4 Total Home Financing (Line 13)

- The total financing required is determined by using a mortgage calculator (such as <http://www.mortgages-bc.com/calculator.shtml>). Assume a 5 year renewable/25 year mortgage, and insert the interest rate as per Line 2. Enter an estimate in the mortgage amount. Adjust the mortgage amount until the monthly payment matches, as close as possible, the monthly mortgage payment in Line 12. This amount is the total financing required.

2.5 Mortgage Insurance (Line 14)

- The mortgage insurance amount is calculated, using the insurance rate from Line 3 as follows:

$$\text{mortgage financing (Line 13)} \times \frac{1}{(\text{insurance rate} + 1) \div \text{insurance rate}}$$

$$= \text{mortgage insurance (Line 14)}$$

2.6 Mortgage Financing (95%) (Line 15)

- Mortgage Financing (95%) is the home financing required based on a 5% down payment and is calculated as follows:

$$\text{mortgage insurance (Line 14)} \div \text{Insurance Rate (Line 3)}$$

$$= \text{mortgage financing at 95% (Line 15)}$$

2.7 Starter Home Price (Line 16):

- The Starter Home Price is calculated as follows:

$$\frac{\text{Mortgage financing (Line 15)} \times 100}{95} = \text{starter home price}$$

2.8 Confirmation of Starter Home Price

- The starter home price is then confirmed using the mill rate (Line 4) to calculate the property tax as follows:

$$\text{starter home price (Line 16)} \times \text{mill rate (Line 4)} = \text{property tax}$$

- Compare this property tax figure to the property tax figure used in Line 5. If the numbers are not similar, adjust the property tax (Line 5) to number

closer to the figure above and repeat the above calculations (Lines 13 through 16).

- Next, using the starter home price, as re-calculated above, work through the table backwards in order to calculate the gross annual income. The gross annual income calculated should be equal to the gross annual income figure representing the median income of a two or more person household in Kelowna (Line 1). If the numbers are not the same, continue to adjust the property tax figure, and repeat the calculations, until the gross annual income figures match.
- Update the figures using the BCCPI if necessary.

SAMPLE ONLY

The following is the starter home price calculation, based on the median income figure for a Kelowna 2 or more person household obtained from the 2006 Census. Income from the Census was for the year 2005 and has been increased using the BC Consumer Price Index to 2007. All the other calculations are based on 2007 rates (e.g. mortgage, mortgage insurance, property tax, utility costs, strata fees).

STARTER HOME CALCULATION

Line		Single Family	Strata	Manufactured Home
Insert:				
1	Gross Income	63426	63426	63426
2	Mortgage Rate (5 year)	0.0775	0.0775	0.0775
3	Insurance Rate	3.1%	3.1%	3.1%
4	Mill Rate	0.0056898	0.0056898	0.0056898
5	Property Tax	1182.72	1115.39	1064.56
6	Homeowner Grant	570	570	570
7	Strata Fees / Mobile Home Pad Rental	0	2100	3600
8	Annual Heating Costs	2012	2012	2012
9	Annual Utility Costs	1947	1947	1947
Calculate:				
10	Annual Housing Cost (30% of Income)	19027.80	19027.80	19027.80
11	Yearly Mortgage Payment	14456.08	12423.41	10974.24
12	Monthly Mortgage Payment	1204.67	1035.28	914.52
13	Total Home Financing	203,595	192,005	183,255
14	Mortgage Insurance Cost	6121.68	5773.17	5510.10
15	Mortgage Financing (95%)	197,473.65	186,231.35	177,745.00
16	Home Price (Starter Home)	207,867.00	196,033.00	187,100.00

Calculation to Update Starter Home Prices for 2008

In 2008, the numbers in the table (page 2) are increased, as in step 1, to generate the following numbers:

$$2008 \text{ median income} = 2007 \text{ median income} (\$63426 \times 1.021 \text{ (based on BCCPI)}) = \$64,758$$

$$\text{Single Family Starter Home 2008} = \$207,867 \times 1.021 = \$212,232$$

Strata Titled Starter Home 2008 = \$196,033. X 1.021 = \$200,150

Mobile / Modular Starter Home 2003 = \$187,100. X 1.021 = \$191,029

**SCHEDULE C
MORTGAGE and MORTGAGE INSURER AGREEMENT TERMS**

In the event that an Owner, who met the Affordable Ownership criteria, enters into a mortgage in respect of an Affordable Ownership Dwelling Unit, the Owner, the Lender, the Mortgage Insurer, and the City agree to the following terms:

In this Agreement:

"Lender" means a mortgagee or holder of a financial charge (the "Charge") that is registered against the title to the Affordable Ownership Dwelling Unit;

"Mortgage Insurer" means Canada Mortgage and Housing Corporation or another company or organization that has an interest in the Charge and that has entered into a mortgage default insurance agreement or other mortgage loan insurance arrangement with a Lender;

"Owner" means the current Owner meeting the Affordable Ownership criteria in possession of the Affordable Ownership Dwelling Unit; and

"Property" means the Affordable Ownership Dwelling Unit and any real property upon which it is located.

In the event of default by the Owner under the Charge, where a Lender or Mortgage Insurer holding a Charge on the Property, notifies the City that the Owner is in default under its Charge, the City shall have a sixty (60) day period beginning on the date of such notice to take such steps as the City deems necessary to preserve the Housing Agreement. Following the sixty (60) day period, if the Owner's default is not cured, the Lender or Mortgage Insurer can enforce the rights under the Charge, including the right to foreclose or sell the Property. Upon sale or foreclosure of the Owner's Property by the Lender or Mortgage Insurer, the Housing Agreement shall cease to apply to the Property and notice shall be discharged from the title to the Property by the City. Notwithstanding the foregoing, if the proceeds of sale from the foreclosure or sale of the Property by the Lender or Mortgage Insurer exceed the balance due under the Charge and related costs, including without limitation, charges, taxes, commissions, utilities and other expenses regarding the Property and claim under the loan insurance, as determined by CMHC, such excess funds shall, subject to applicable provincial or federal legislation, forthwith be paid to the Owner up to the Starter Home Price in the Housing Agreement, and the balance payable to the City, for its own use absolutely.

SCHEDULE D
[AFFORDABLE RENTAL UNITS]

CANADA)	IN THE MATTER OF A HOUSING AGREEMENT
)	WITH THE CITY OF KELOWNA ("Housing
PROVINCE OF BRITISH COLUMBIA)	Agreement") for the land legally described
)	as [INSERT LEGAL]
)	
)	
)	
)	
)	

I, _____, of _____, do solemnly declare:

11. This declaration is made with respect to the Dwelling Unit ("Unit") legally or otherwise described as follows:

[INSERT LEGAL DESCRIPTION AND CIVIC ADDRESS].

12. That I am the Owner of the Unit and make this declaration to the best of my personal knowledge.

[or]

That I am the _____ [director, officer, employee] of the Owner of the Unit and [make this declaration to the best of my personal knowledge] [or: have been informed by _____ and believe the statements in this declaration to be true].

13. This declaration is made pursuant to the Housing Agreement in respect of the Unit.

14. The average affordable rent for Kelowna from the most recent annual Canada Mortgage and Housing Corporation (CMHC) Rental Market Report for an apartment of the Unit's size is \$_____ per month, including the cost of heat, water, and electricity;

5. The rent charged each month for the Unit is as follows:

(d) the monthly rent on the date 365 days before the date of this statutory declaration was \$_____ per month;

(e) the monthly rent on the date of this statutory declaration is: \$_____; and

(f) the proposed or actual monthly rent that will be payable on the date that is 90 days after the date of this statutory declaration is \$_____.

6. For the period from _____, _____ to _____, _____ the Unit was occupied by the following persons, whose names and addresses appear below, and in accordance with the Housing Agreement:

[INSERT NAMES AND AGES OF ALL OCCUPANTS WITH ADDRESS OF UNIT].

SCHEDULE E
[AFFORDABLE RENTAL CALCULATIONS]

The "Affordable Rental" rate is based on the premise that households that spend 30% of their income on basic shelter costs to afford rents equivalent to the average rents published annually by Canada Mortgage and Housing Corporation (CMHC) for Kelowna are facing a housing shortage. This is the direction behind the City of Kelowna Official Community Plan, Bylaw 7600 (policy 8.1.16). This Housing Agreement is a method of creating affordable housing for such households.

The City of Kelowna will publish the Average Monthly Rents for different sizes of Affordable Rental Dwelling Units periodically, which will be the average rents for Kelowna from the annual CMHC Rental Market Report.

The Owner may not permit a Household whose Gross Annual Income is greater than the Maximum Annual Income, as calculated according to the formula below, to occupy an Affordable Rental Dwelling Unit. Gross Annual Income is aggregated taxable income (line 260 of income tax T1 General Form) of all residents 15 years and older residing in the Dwelling Unit. The Maximum Allowable Income is calculated based on the Dwelling Unit size by number of bedrooms that the Household rents. Rent, for affordability purposes, must include heat, electricity and water.

The formula to calculate the Maximum Annual Income permitted for a Household to occupy an Affordable Rental Dwelling Unit is as follows:

$$\text{Maximum Annual Income} = \text{Average Monthly Rent (CMHC)} \times 40$$

This is an abbreviated version of:

$$(\text{Maximum Annual Income} \times 30\%) = (\text{Average Monthly Rent} \times 12 \text{ months})$$

SAMPLE:

Average Monthly Rents of All Private Apartments in the City of Kelowna, 2011
(Canada Mortgage and Housing Corporation Market Rental Survey- City of Kelowna)

	Bachelor	One Bedroom	Two Bedroom	Three Bedroom +
Average Monthly Rent	\$586	\$734	\$914	\$1,068

The Maximum Annual Income Calculations for 2008:

- 1 Bedroom Unit
Maximum Annual Income = $586 \times 40 = \$23,440$
- 2 Bedroom Unit
Maximum annual income = $914 \times 40 = \$29,360$
- 3 Bedroom Unit
Maximum annual income = $1,068 \times 40 = \$42,720$

SCHEDULE F

MORTGAGE and MORTGAGE INSURER AGREEMENT TERMS

In the event that an Owner, of a property containing one or more Affordable Rental Unit(s) to which this Housing Agreement pertains, enters into a mortgage in respect of the property in question, the Owner, the Lender, the Mortgage Insurer, and the City agree to the following terms:

In this Agreement

"Lender" means a mortgagee or holder of a financial charge (the "Charge") that is registered against the title to the Property;

"Mortgage Insurer" means Canada Mortgage and Housing Corporation or another company or organization that has an interest in the Charge and that has entered into a mortgage default insurance agreement or other mortgage loan insurance arrangement with a Lender; and

"Owner" means the current Owner of the Property

"Property" means the Affordable Rental Units and any real property upon which they are located, identified in the Housing Agreement attached hereto.

In the event of default by the Owner under the Charge, where a Lender or Mortgage Insurer holding a Charge on the Property, notifies the City that the Owner is in default under its Charge, the City shall have a sixty (60) day period beginning on the date of such notice to take such steps as the City deems necessary to preserve the Housing Agreement. Following the sixty (60) day period, if the Owner's default is not cured, the Lender or Mortgage Insurer can enforce the rights under the Charge, including the right to foreclose or sell the Property.

Upon sale or foreclosure of the Owner's Property by the Lender or Mortgage Insurer, the Housing Agreement shall cease to apply to the Property and shall be discharged from the title to the Property by the City.

Notwithstanding the foregoing, if the proceeds of sale from the Lender or Mortgage Insurer exceed the loss under the Charge including all costs and expenses incurred, as determined by the Lender or Mortgage Insurer, such excess amount shall be paid to the City, subject to any prior encumbrances or applicable provincial or federal legislation.

END OF DOCUMENT